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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,951	09/26/2003	Michael S. Halbherr	4729-00052	9407

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EXAMINER

NOLAND, KENNETH W

ART UNIT	PAPER NUMBER
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3653

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/672,951

Applicant(s)

HALBHERR, MICHAEL S.

Examiner

Kenneth W. Noland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20,21 and 24-27 is/are allowed.
- 6) ☒ Claim(s) 1-19,22 and 23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01-08-04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to this, claim 1 recites in line 21, that the 'top of the frontmost package' is pressed against the inner wall section. However, as shown in figures 3A and 3B, the bottom of the frontmost package is pressed against the inner wall section. Correction is required. If the indefiniteness is corrected, then claims 3-7, 10 and 12-16 would be considered allowed if rewritten in independent form to include any intervening claims.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1,2,8,9,11,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rein in view of Johnson et al. As the claim would be understood, Rein discloses the apparatus to effect the method of a display for articles, as the rectangular packages of cigarettes in figure 4a having the display (cigarettes) on the front of the packages. There is a tray having front, rear and side walls (14,15) and a recess to receive a detachable, biased pusher 21 therein, see figure 2. Note in figure 3 the ledges 16 having a vertical and a horizontal portion, to support the packages for

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movement there along**. To modify Rein 's tray for a 'double-walled' construction would be obvious in view of the teachings of Johnson et al's use of the thick or double walled construction of the tray shown in figure 3 to affect a more sturdy structure for the tray. To provide that Rein's display would display another article, as paper napkins, would be obvious as a mere choice of utility to so display any other article, as so desired, and, therefore, this utility expedience is not afforded any patentable weight. In regard to claim 8 , the specific thickness for Rein's tray for a thickness of between about .03 and about .04 inches would be obvious as a mere choice of structural design to so provide any desired thickness to the tray, and , therefore, this structural design expedience is not afforded any patentable weight.

5. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Rein in view of Johnson et al** as applied to claims 1,2,8,9,11,17 and 19*** above, and further in view of *Pernicano et al. To provide Rein's packages for a transparent wrapper so that a design would be seen on the package, would be obvious in view of the teachings of Pernicano et al's use of the transparent wrapper (see the abstract) to show a design on a shirt article so that the customer may be informed as to a specific design of the article to be purchased.**.

6. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Rein in view of Pernicano et al. Note again in paragraph 4, the disclosed display of Rein with again the display (cigarettes) on the front of the packages. To provide that Rein's display would display another article, as paper napkins, would be obvious as a mere choice of utility to so display any other article, as so desired, and, therefore, this

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utility expedience is not afforded any patentable weight. *To provide Rein's packages for a transparent wrapper so that a design would be seen on the package, would be obvious in view of the teachings of Pernicano et al's use of the transparent wrapper to show a design on the shirt article so that the customer may be informed as to a the design to the article to be purchased. Finally, to so position Rein's modified display so that the packages would be at a line of sight of a customer, would be obvious as a mere choice of structural orientation to so position the articles at any position as so desired, and, therefore, this orientating feature is not afforded any patentable weight.*.

7. Claims 20,21 and 24-27 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth W. Noland whose telephone number is (571) 272-6941. The examiner can normally be reached on Monday-Thursday ,each week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Walsh can be reached on (703) 306-4173. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KENNETH W. NOLAND
PRIMARY EXAMINER